IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.A.NOs.2328 and 2329 of 2001 and
M.P.Nos.18106 and 18107 of 2001

1.M.Shanmugam
2.S.Subramonian
3.V.Moorthi
4.N.Sivakumar
5.J.Anthony cruz
6.L.Eswaran
7.R.Subramanian ... Appellants in WA.2328/2001/ Petitioners

N.Yadavakrishnan ... Appellant in WA.2329/2001/ Petitioners

Vs.

1.The General Manager,
Tamilnadu State Transport Corporation Ltd.,
Kovai Division-I
37, Mettupalayam Road, Coimbatore-43.
...ISt Respondent in both W.As.

2.The Branch Manager,
Tamilnadu State Transport Corporation
(Division-1), Ooty Branch-I,
Uthagamandalam, Nilgiris. ... 2nd Respondent in W.A.2328/01

3.The Branch Manager,
Tamil Nadu State Transport Corporation
(Division-1), Ooty Branch-I,
Uthagamandalam, Nilgiris. ... 3rd Respondent in W.A.2328/01

4.The Branch Manager,
Tamil Nadu State Transport Corporation,
(Division-I), Coonoor Branch,
Coonoor, Nilgiris. ... 4th Respondent in W.A.2328/01

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5.The Branch Manager,
Tamil Nadu State Transport Corporation,
(Division-I), Gudalur Branch,
Gudalur, Nilgiris. ...5th Respondent in WA.2328/2001

6.The Superintendent,
Tamilnadu State Transport Corporation
(Division-1), Ooty Branch-I, Ooty.
...2nd Respondent in WA.2329/2001

Prayer in W.A.2328/2001: Appeal filed under Clause 15 of Letters Patent against the order in W.P.No.6820/2001 dated 20.09.2001.
Prayer in W.A.2329/2001: Appeal filed under Clause 15 of Letters Patent against the order in W.P.No.2045/2001 dated 20.09.2001.

For Appellants : Mr.D.Hariparanthaman

For Respondents : Mr.R.Singaravelan

COMMON JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL,J.)

The appellants in W.A.No.2328 of 2001 pray in W.P.No.6820 of 2001 for issuance of direction to the respondents to regularise their services in the post of Electronic Data Processing Operator from the date of their initial engagement as Electronic Data Operators and continue them as Computer Operators.

2.The appellant in W.A.No.2329 of 2001 prays in W.P.No.2045 of 2001 for issuance of direction to the respondents to continue him as Computer Operator in the respondent Corporation.

3.Aggrieved against the common orders passed by the learned Single Judge in W.P.Nos.2045 and 6820 of 2001 dated 20.09.2001, the present writ appeals in W.A.Nos.2329 and 2328 of 2001 have been preferred by the writ appellant/appellants.

4.It is the case of the appellants in W.A.No.2328 of 2001/writ petitioners in W.P.No.6820 of 2001 that they are to be regularised in the service in the post of EDP Operators and that they have put in more than 480 days of service in a period of 24 calendar months and continued deployment in the EDP wing, to do the duties of EDP operators had created a legitimate expectation in the minds of the appellants and as such, the respondent Corporation cannot seek to transfer them to the post of Conductors to avoid the liability to pay the salary due and payable to them.

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5.In the counter filed by the first respondent Corporation, it is specifically stated that only due to the department exigencies some of the Conductors were temporarily transferred to EDP Department and the appellants/petitioners were working there for some time and thereafter, because of the amalgamation of the Transport Corporation, these Conductors became redundant and hence, they were transferred back to work in their original place of work as Conductors and that the appellants/petitioners have no right to force the Transport Corporation to continue them to work in another section with the Conductor designation and that the appellants do not have any right or lien to claim for the post of Computer Operator.

6.The case of the appellant in W.A.No.2329 of 2001/writ petitioner in W.P.No.2045 of 2001 is that he joined as a Conductor in the Ooty Branch-II of the respondent Corporation in 1986 and that the first respondent by an order dated 11.09.1998 posted him as Computer Operator in Ooty Branch-I and he was working as Computer Operator since then and the respondent Corporation gave him training in computer operations and acquired skill in the computer operations and on the basis of training, he was working as Computer Operator and that he was paid Rs.50/- as an allowance initially and on 23.01.2001, the second respondent asked him to go on line as a Conductor and he orally directed him to work as Conductor and there was no written orders and that a direction may be issued to the respondents to continue him as Computer Operator.

7.In the counter filed by the first respondent, it is inter-alia stated that the appellant/petitioner was appointed as Conductor as per appointment order No.4978/E3B/51B/CTC/1987 dated 31.7.1987 by the then M/s.Cheran Transport Corporation Limited and that he joined the Corporation on 26.9.1987 and after the bifurcation of the M/s.Cheran Transport Corporation, a new Company in the name of M/s.Mahakavi Bharathiyar Transport Corporation Limited was formed with effect from 18.2.1994 and that the appellant/petitioner was attached with the new Corporation, having its operational jurisdiction of Nilgiris District.

8.It is the case of the respondents that the appellant/petitioner worked as Conductor till September 1998 and when additional computer systems were established at Ooty I & II Branches for the purpose of receiving collection and ticket books from the Conductors, during that time the Conductors who possessed knowledge in computer operation approached the Management and requested them to work in another section without any change in emoluments and that 12 persons were permitted to work in another section transitorily and they were not paid any special allowance and that the appellant who was served as a Conductor in Ooty-I

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Branch, on his production of a copy of completion of course certificate in Diploma in Office Automation was permitted to work in another section temporarily and he was not paid any special allowances.

9.It is evident that the Government of Tamil Nadu in G.O.Ms.No.27 (Transport T1 Department) dated 27.1.1999 has ordered to amalgamate the Mahakavi Bharathiyar Transport Corporation who was re-named as Tamil Nadu State Transport Corporation (Coimbatore Division-III) Limited, Udhagamandalam because of the loss incurred continuously etc. After the amalgamation of the DIV-III with DIV-I, the Registered Office at Udhagamandalam was closed and the surplus Administrative staff were working in their Registered Office were posted to various branches and the appellant/petitioner was directed to go on route to perform the duty as conductor along with the others. Instructions were issued to the conductors who performed other duties either in office or in other section, to work as conductor. However, a written order was not issued/given in view of the fact that the appellant is a conductor who has to perform conductor duty as per designation.

10.As far as the present case is concerned, the appellant/petitioner who was a conductor earlier was permitted to work in another section in view of his knowledge in computer operation, on account of exigency of work.

11.The learned Single Judge by the common order dated 20.09.2001 has dismissed the writ petitions No.2045 of 2001 and 6820 of 2001, inter-alia observing as follows:

> "4.The learned counsel for the respondent Corporation also places reliance on the decision of this Court dated 17.7.2001, made in Writ Petition No.19579 of 2000 (D.Sundaram Vs. The Managing Director, Metropolitan Transport Corporation Ltd., Chennai and another) wherein one Sundaram, who was initially appointed as Conductor and thereafter, was transferred to the post of computer Operator with Special Pay and later on, re-posted on "Line Duty" with effect from 21.11.2000, aggrieved by which, he preferred the above writ petition for the issuance of a writ of Mandamus, forbearing the respondents from reverting the petitioner from the post of Data Entry Operator/Computer Operator to that of Conductor on "Line Duty" and the Learned Single Judge dismissed the writ petition holding that there is no error or illegality in the said impugned order, which was confirmed by a Division Bench of this Court in Writ Appeal No.1371 of 2001, by order dated 8.8.2001.
>
> 5.If that be so, the order of the Division Bench of

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this Court dated 8.8.2001, made in Writ Appeal No.1371 of 2001 has become final and the same is binding on the petitioners.

6.Hence, finding no merits, both the writ petitions are dismissed. No costs. Consequently, the injunction granted by this Court in W.M.P.Nos.2758 and 9742 of 2001 are vacated and W.M.P.Nos.19093 and 22752 of 2001 are also dismissed."

12.It is pertinent to note that regularisation in the post of Electronic Data Processing Operator/to continue a person as Computer Operator is an act which is solely within the power and province of authority viz., Transport Corporation. Regularisation in the post of Electronic Data Processing Operator/to continue a person as Computer Operator cannot be said to be a method/mode of recruitment. We are of the opinion that to accede to such a request would certainly introduce 'a new caption of appointment', in setting at naught the rules. Moreover, merely on the strength of the fact that the appellant was working continuously as Computer Operator, the appellant/petitioner cannot lay a claim to permit him to continue in the said post. It cannot be lost sight of that the appellant /petitioner is still in the post of Conductor.

13.While that being the position, we are of the view that the appellants/appellant Writ Appeals No.2328 and 2329 of 2001 cannot succeed. However, the learned counsel appearing for the appellants prays for permission to withdraw the Writ Appeals No.2328 and 2329 of 2001 preferred by the respective appellants/appellant. Acceding to the said prayer/request of the learned counsel for the appellants, the present Writ Appeals No.2328 and 2329 of 2001 are permitted to be withdrawn and the same are dismissed as withdrawn.

14.In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

sgl

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To

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(Division-I), Gudalur Branch,
Gudalur, Nilgiris.

6.The Superintendent,
Tamilnadu State Transport Corporation
(Division-1), Ooty Branch-I, Ooty.

2 cc to Mr.R. Singaravelan, Advocate, Sr. 75137 and 75138

W.A.NOs.2328 and 2329 of 2001

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